

ORDINANCE NO. 0-99-120

City of Conway  
P-125H

AN ORDINANCE WHEREBY THE CITY OF CONWAY OF THE STATE OF ARKANSAS AND THE SOUTHWESTERN BELL TELEPHONE COMPANY; A MISSOURI CORPORATION; AGREE THAT THE TELEPHONE COMPANY SHALL CONTINUE TO OPERATE ITS TELEPHONE SYSTEM AND ALL BUSINESS INCIDENTAL TO OR CONNECTED WITH THE CONDUCTING OF A TELEPHONE BUSINESS AND SYSTEM IN SAID CITY; AND ERECT AND MAINTAIN ITS PLANT CONSTRUCTION AND APPURTENANCES ALONG; ACROSS; ON; OVER; THROUGH; ABOVE AND UNDER ALL PUBLIC STREETS; AVENUES; ALLEYS; PUBLIC GROUNDS AND PLACES IN SAID CITY; THAT THE CITY SHALL RECEIVE AN ANNUAL PAYMENT FROM THE TELEPHONE COMPANY; AND REPEALING ALL ORDINANCES AND AGREEMENTS IN CONFLICT HEREWITH:

WHEREAS; the City desires to enact and impose upon the Telephone Company a tax which shall be in lieu of all other licenses, charges, fees or special taxes other than the usual general or special ad valorem taxes, and

WHEREAS; the City recognizes and concurs in the purpose and intent of an order of the Arkansas Public Service Commission entered on February 7, 1980, in Docket U-3013 relating to the treatment by the Telephone Company in all City special taxes;

NOW; THEREFORE: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

SECTION 1: The Southwestern Bell Telephone Company, its successors and assigns (herein referred to as "Telephone Company") shall continue to operate its telephone system and all business incidental to or connected with the conducting of a telephone business and system in the City of Conway, State of Arkansas, (herein referred to as "City") . The plant construction and appurtenances used in or incident to the giving of telephone service and to the maintenance of a telephone business and system by the Telephone Company in said City shall remain as now constructed, subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and by the Telephone Company in the conduct of its business and said Telephone Company shall continue to exercise its right to place, remove, construct and reconstruct, and extend and maintain its said plant and appurtenances as the **business and purpose for which it is or may be incorporated** may from time to time require, along, across, on, over, through, above and under all the public streets, avenues, alleys, and the public grounds and places within the limits of said City as the same from time to time may be established.

SECTION 2: The Telephone Company shall pay to the City for the period January 1, 2000 through December 31, 2000 inclusive and thereafter for like periods an amount equal to **4.25%** of local exchange access line charges collected in the corporate limits of the City for the

previous calendar year. Said sum to be paid in equal quarterly installments on or before the last day of March, June, September, and December of each year.

**SECTION 3:** The annual payment herein required shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which may be imposed by the City under authority conferred by law. The Telephone Company shall have the privilege of crediting such sums with any unpaid balance due said Company for telephone services rendered or facilities furnished to said City.

**SECTION. 4:** The Telephone Company on the request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

**SECTION 5:** Permission is hereby granted to the Telephone Company to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Telephone Company, all the said trimming to be done under the supervision and direction of any City official to whom said duties have been or may be delegated.

**SECTION 6:** Nothing in this Ordinance contained shall be construed to require or permit any electric light or power wire attachments by the City or for the City. If light or power attachments are desired by the City, then a separate non contingent agreement shall be a prerequisite to such attachments.

**SECTION 7:** Nothing herein contained shall be construed as giving to the Telephone Company any exclusive privileges, nor shall it affect any prior or existing rights of the Telephone Company to maintain a telephone system within the City.

**SECTION 8:** All new installations of telephone plant construction and/or appurtenances that cross drainage channels shall be coordinated with the City Engineer in advance of placement. Any damage to streets, sidewalks, driveways, curbs, gutters or other infrastructure taking place due to placement of telephone plant construction and/or appurtenances shall be repaired by the Telephone Company at their expense.

**SECTION 9:** The City assumes no maintenance responsibility for any plant construction and/or appurtenances. The City shall not be responsible for negligent damage to any plant construction and/or appurtenances by the City or by utility (public or franchised private) crews while performing normal maintenance work in the public right-of-way, public easements or public grounds and places. The City assumes no liability for personal injury or property damage as a result of the placement of any plant construction and/or appurtenances.

**SECTION 10:** Upon notice from the appropriate city department (as established by the Mayor), the Telephone Company shall remove plant construction and/or appurtenances from the public right-of-way, public easements and public grounds and places at their own expense for any public improvement project or if the situation is deemed by a court to be a public nuisance. As a matter of policy, the City will seek to minimize current and future installation adjustment costs for the Telephone Company by such measures as regular and systematic consultation in public works planning, advance engineering to the extent feasible, and careful consideration of public utility needs and installations in both planning and design.

**SECTION 11:** The City will also reimburse the Telephone Company for the direct costs of required adjustments when the Telephone Company can demonstrate that the Telephone Company acquired the right-of-way or otherwise occupied it prior to the dedication of the right-of-way either to the City of Conway or to any other unit of local government. Adjustment costs shall be reimbursed, when appropriate, under an agreement between the City and the Telephone Company for the particular project. Such agreement shall describe the scope of the Telephone Company's adjustment work and allocate costs. The cost allocation shall not require the City to reimburse for betterments which are only occasioned by the adjustment required.

**SECTION 12:** The said Telephone Company shall have ninety (90) days from and after its passage and approval to file its written acceptance of this ordinance with the City Clerk, and upon such acceptance being filed, this Ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the Mayor. The Ordinance shall continue in effect and be in force until terminated by the City or the Telephone Company as of the end of any year after giving one (1) year's written notice of intention to terminate.

APPROVED this 14<sup>th</sup> day of December, 19 99.

Tab Townsell  
Tab Townsell, Mayor

Michael O. Garrett  
Michael O. Garrett, City Clerk